

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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*
UNITED STATES OF AMERICA *
* v. * 04-CR-51-01-JD
* * October 14, 2004
* 2:00 p.m.
* SUNDAY WILLIAMS *
* * * * * * * * * * * * * * * * *

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE JOSEPH A. DiCLERICO JR.

Appearances:

For the Government: Alfred Rubega, AUSA
U.S. Attorney's Office

For Probation: Melissa Elworthy
U.S. Probation Office

For the Defendant: Richard F. Monteith Jr., Esq.
14 Londonderry Road
Londonderry, NH 03053

Court Reporter: Celeste A. Quimby
NH LCR No. 17
(quimbybj@metrocast.net)

1 BEFORE THE COURT

2 THE CLERK: The court has before it for
3 consideration this afternoon a change of plea in
4 Criminal Case 04-51-01-JD, United States of America
5 versus Sunday Williams.

6 Mr. Williams, if you'd please raise your right
7 hand.

8 SUNDAY WILLIAMS

9 having been duly sworn, testified as follows:

10 THE CLERK: And for the record, if you'd
11 please state your full name.

12 MR. WILLIAMS: My name is Sunday Williams.

13 THE CLERK: Thank you. Please be seated.

14 THE COURT: All right. Good afternoon.

15 MR. MONTEITH: Good afternoon, your Honor.

16 MR. WILLIAMS: Good afternoon.

17 THE COURT: Mr. Williams, the court will be
18 asking you a number of questions over the next 20 or 25
19 minutes.

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: You've just taken an oath, so
22 you have an obligation to answer my questions

23 truthfully.

24 MR. WILLIAMS: Yes, sir.

25 THE COURT: If you do not answer my questions

3

1 truthfully, you could be charged with perjury and with
2 making false statements.

3 It's in your interests to answer my questions
4 truthfully because it's my responsibility to determine
5 if you understand what you're doing this afternoon and
6 the consequences of what you're doing.

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: So if you do not understand any of
9 my questions, please let me know.

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: And if you want to consult with
12 Mr. Monteith at any time during our discussion, please
13 feel free to do so.

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: So that you and he can talk to
16 each other easily, you can both remain seated during our
17 discussion.

18 MR. WILLIAMS: Yes, sir.

19 THE COURT: How old are you, Mr. Williams?

20 How old are you, Mr. Williams?

21 You can remain seated.

22 MR. WILLIAMS: Okay.

23 THE COURT: How old are you, Mr. Williams?

24 MR. WILLIAMS: 46.

25 THE COURT: And how much education have you

1 had?

2 MR. WILLIAMS: Up to a Master's degree.

3 THE COURT: Excuse me?

4 MR. WILLIAMS: Up to a Master's degree.

5 THE COURT: Could you pull the microphone up a
6 little bit closer to Mr. Williams.

7 MR. WILLIAMS: Up to a Master's degree.

8 THE COURT: You can read and write English
9 reasonably well?

10 MR. WILLIAMS: I can read.

11 THE COURT: You and I have to -- if you pull
12 that a little closer to him too.

13 You can read and write English reasonably
14 well?

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: What type of work do you do?

17 MR. WILLIAMS: I work for the City of New
18 York.

19 THE COURT: And what sort of work do you do
20 for the city?

21 MR. WILLIAMS: A case manager.

22 THE COURT: Have you ever been treated by a
23 doctor or a hospital for any form of a mental illness or
24 mental disability?

25 MR. WILLIAMS: No, sir.

1 THE COURT: Do you have a drug or an alcohol
2 problem?

3 MR. WILLIAMS: No, sir.

4 THE COURT: Right now, are you under the
5 influence of any drugs or any alcohol?

6 MR. WILLIAMS: No, sir.

7 THE COURT: Are you taking any prescription
8 medication?

9 MR. WILLIAMS: No, sir.

10 THE COURT: You are a citizen of what
11 country?

12 MR. WILLIAMS: Citizen of Nigeria.

13 THE COURT: Nigeria?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: Have you had enough time to talk
16 with your attorney about this case?

17 MR. WILLIAMS: Yes, sir.

18 THE COURT: And have you told him everything
19 that you know about your case?

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: Are you satisfied with the
22 representation that he's provided for you up to this
23 point in time?

24 MR. WILLIAMS: Yes, sir.

25 THE COURT: Now, the court has before it a

1 document entitled Plea Agreement with your signature on
2 the last page.

3 Did you sign this agreement?

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: And did you sign it freely and
6 voluntarily?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: Did you review it with Mr.

9 Monteith before you signed it?

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: Mr. Monteith, are you satisfied
12 that your client understands all of the terms and
13 conditions of this agreement?

14 MR. MONTEITH: I am, your Honor.

15 THE COURT: Now, under this agreement you
16 intend to plead guilty to count one of the indictment
17 that charges you with making false statements.

18 Do you understand that this is a felony?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: Do you know what the maximum
21 term of imprisonment is under the law for this --

22 MR. WILLIAMS: Yes, sir.

23 THE COURT: -- offense?

24 MR. WILLIAMS: Yes, sir.

25 THE COURT: Can you tell me what that is?

1 MR. WILLIAMS: Five years.

2 THE COURT: That's correct; five years.

3 And you could be fined up to \$250,000. Do you
4 understand that?

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: There's going to be a special
7 assessment of a hundred dollars imposed. Do you
8 understand that?

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: And you could be subject to a term
11 of supervised release of up to three years. Do you
12 understand that?

13 MR. WILLIAMS: Yes, sir.

14 THE COURT: As a result of this conviction, do
15 you understand that you could face the possibility of
16 deportation?

17 MR. WILLIAMS: Yes, sir.

18 THE COURT: Now, the sentence that will be
19 imposed in this matter will be governed by the United
20 States Sentencing Guidelines.

21 If your plea is accepted, the probation
22 officer, who is seated to your right in the courtroom,
23 will prepare a presentence investigation report. That
24 report will contain information about your background
25 and about your participation in this offense.

1 Once that report is prepared, you and your

2 attorney and the government's attorney will get a copy
3 of the report. You will have an opportunity to review
4 it and to try to resolve any objections with the
5 officer. And to the extent that you can't resolve any
6 objections, then they will be resolved at the time of
7 your sentencing hearing.

8 Once that process is completed, the court then
9 determines under the guidelines what the offense level
10 is for your case and what the range of sentence is for
11 your case.

12 You may have certain rights to have any
13 factors affecting the sentence determined by a jury and
14 proven by the government beyond a reasonable doubt. Do
15 you understand that?

16 MR. WILLIAMS: Yes, sir.

17 THE COURT: Now, it's the court's
18 understanding that you wish to give up your right to
19 have the jury make those determinations; is that
20 correct?

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: If you give up your right to have
23 the jury make those determinations, then the court
24 will make those determinations at the time of your
25 sentencing using the standard of a preponderance of the

1 evidence, which is a lower standard of proof. Do you
2 understand that?

3 MR. WILLIAMS: Yes, sir.

4 THE COURT: And do you give up this right
5 freely and voluntarily?

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: Now, once the court has determined
8 under the guidelines what the range is for your case, in
9 some instances the court can impose a sentence that's
10 greater than the guideline range or less than the
11 guideline range. If that happens, do you understand
12 you cannot withdraw your guilty plea?

13 MR. WILLIAMS: Yes, sir.

14 THE COURT: If you do not receive a sentence
15 that you would like to receive or hope to receive, do
16 you understand that you cannot withdraw your guilty
17 plea?

18 MR. WILLIAMS: Yes, sir.

19 THE COURT: Mr. Monteith, have you reviewed
20 the possible applications of the guidelines with your
21 client?

22 MR. MONTEITH: I have, your Honor.

23 THE COURT: Now, Mr. Monteith has probably
24 given you an estimate as to where your case falls under
25 the guidelines. In the end, the court will make the

1 final determination. If it is different from what he
2 has told you, do you understand you cannot withdraw your
3 guilty plea?

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: Now, in order for the government
6 to -- one minute.

7 When an individual enters a plea of guilty, he
8 gives up some very important constitutional rights.

9 You have the right to persist in a plea of not
10 guilty and to go to trial before a jury represented by
11 your attorney.

12 At that trial you would have the opportunity
13 to see, to hear, and to question any witnesses that the
14 government called to testify against you.

15 You would have the opportunity to subpoena
16 witnesses on your own behalf and to present to the jury
17 any defenses you have to this charge.

18 If you wanted to, you could take the witness
19 stand on your own behalf, but the government could not
20 require you to take the witness stand, because you have
21 a right against self-incrimination.

22 If you were convicted, you could appeal that
23 conviction.

24 Do you understand that if you enter this plea
25 of guilty, you're going to give up all of those

11

1 important rights?

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: And do you give up those rights
4 freely and voluntarily?

5 (No audible response.)

6 THE COURT: Do you give up those rights freely
7 and voluntarily?

8 MR. WILLIAMS: Yes, sir.

9 THE COURT: In order for the government to
10 gain a conviction, there are certain material elements
11 that the government would have to prove beyond a
12 reasonable doubt to the jury's satisfaction.

13 First, that on the date specified in the
14 indictment you made a material statement or
15 representation.

16 A material statement or representation is a
17 statement that has a natural tendency to influence or
18 to be capable of influencing the decision in a matter,
19 whether it be made by an administrator, a bureaucrat, or

20 whatever. So a material statement is one that's capable
21 of affecting the outcome of a decision, not a minor or
22 insignificant statement.

23 Secondly, the statement must have been false,
24 fictitious, or fraudulent.

25 Thirdly, that that false, fictitious, or

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1 fraudulent statement or representation was made
2 knowingly and willfully. In other words, you must have
3 acted voluntarily and deliberately and not mistakenly or
4 inadvertently. You must have been aware of what you
5 were doing.

6 And lastly, that the statement or
7 representation was made in a matter that was in the
8 jurisdiction of the government of the United States.

9 Now, keeping those elements in mind, I'm going
10 to ask you if you admit to the allegations contained in
11 count one of the superseding indictment, which alleged
12 that in or about May through July 2001, in the District
13 of New Hampshire and elsewhere, Sunday Williams, in the
14 matter within the jurisdiction of the United States
15 Department of State, an agency of the executive branch
16 of the government of the United States, knowingly and

17 willfully falsified a material fact, made materially
18 false, fictitious, and fraudulent statements and
19 representations, and made and used a false writing and
20 document, knowing the same to contain a materially
21 false, fictitious, and fraudulent statement in entry, in
22 connection with an application for a United States
23 Passport, Form DSP-11, in that the defendant, Sunday
24 Williams, executed an application for a United States
25 Passport, which was received at the National Passport

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1 Center in or about January 21st, 2003.
2 In order to induce and secure the issuance
3 of a United States Passport, Sunday Williams falsely
4 stated on the application that he was a United States
5 citizen, that his name was Salahudeen Muhammed Green,
6 and that he was born on August 21st, 1972, in Brooklyn,
7 New York, and that his Social Security number was
8 XXX-XX-8063.

9 In support of his application, Mr. Williams
10 submitted a birth certificate which purported that he
11 was born in Brooklyn, New York, on August 21st, 1972,
12 and that his name was Salahudeen Muhammed Green.

13 Sunday Williams knew that these statements and
14 representations were false, and that at all relevant
15 times Sunday Williams was neither a citizen nor a
16 national of the United States and was ineligible to
17 receive a United States Passport, in violation of the
18 laws of the United States.

19 Do you admit to those factual allegations?

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: I'm now going to ask the
22 prosecutor to state what facts that the government
23 would intend to prove if this case went to trial.

24 Listen carefully, and if you have any
25 objections to what he says, you can tell me what those

14

1 are when he finishes.

2 MR. RUBEGA: Thank you, your Honor.

3 Were the case to go to trial, the United
4 States would prove every element of the charge beyond a
5 reasonable doubt.

6 Testimony by Passport Specialist Calvin Wells,
7 as well as certified records of the U.S. State
8 Department's National Passport Center in Portsmouth,
9 New Hampshire, would prove that on or about May 16,

10 2001, an application for a U.S. Passport, or DSP-11,
11 was submitted under the identity of Salahudeen
12 Muhammed Green, along with what purported to be the
13 applicant's birth certificate from the City of New York.
14 The applicant submitted the birth certificate to bolster
15 a claim made in the application of U.S. citizenship and
16 a claim that the defendant was born on 8/21/72 in
17 Brooklyn, New York.

18 Passport Specialist Wells' testimony and the
19 certified records of the U.S. State Department would
20 prove that this application was forwarded for processing
21 and adjudication to the National Passport Center in
22 Portsmouth, New Hampshire, where it was received on
23 or about July 1, 2001.

24 Passport Specialist Calvin Wells would
25 testify that he referred the application to the

1 National Passport Center's Fraud Coordination Office
2 due to suspected fraud, and that the application
3 was then referred to the U.S. State Department's
4 Diplomatic Security Service for location of the
5 subject who submitted the application and further

6 investigation.

7 U.S. State Department's Diplomatic Security
8 Service Special Agents James Eisenhut and Marcos
9 Cabrera would testify that they, on January 23, 2003,
10 interviewed the applicant, Mr. Williams, and that Mr.
11 Williams signed a written and sworn statement admitting
12 that his true name was Sunday Williams, that he was
13 born in Lagos, Nigeria, his true date of birth was
14 9/26/57, and that he hoped to obtain the passport to
15 visit his father in Nigeria, as his father was
16 seriously ill.

17 Mr. Williams admitted that he obtained the
18 documents he used to impersonate Mr. Green from the
19 real Mr. Green himself, who assisted Mr. Williams in
20 making the fraudulent application, for which Mr.
21 Green -- pardon me; for which Mr. Williams paid Mr.
22 Green \$500.

23 The special agents would further testify that
24 they took Mr. Williams' fingerprints, which they then
25 forwarded to the Department of Homeland Security, Bureau

1 of Immigration and Customs Enforcement.

2 The testimony of special agents and certified

3 records both of the Department of Homeland Security,
4 Bureau of Immigration and Customs Enforcement, would
5 prove that Mr. Williams' admissions as to his identity,
6 true date and place of birth, foreign citizenship and
7 illegal status in the U.S. were corroborated, and that
8 Mr. Williams had been admitted to the U.S. as a
9 temporary worker on 05/02/92, was authorized to remain
10 until 06/05/92, and had been in removal proceedings
11 previously, had applied for political asylum, and was
12 issued employment authorization, which had expired.

13 Thank you, your Honor.

14 THE COURT: Any exceptions to those facts, Mr.
15 Monteith?

16 MR. MONTEITH: No, your Honor.

17 THE COURT: Mr. Williams, do you accept the
18 facts as stated by the prosecutor?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: Has anybody said anything to you
21 or done anything to you in any way to force you or to
22 threaten you into entering this guilty plea?

23 MR. WILLIAMS: No, sir.

24 THE COURT: Do you have any questions about
25 anything that I have said to you or asked you up to this

1 point in time?

2 MR. WILLIAMS: Ultimately, I only want to say
3 that I don't have any objection to it.

4 THE COURT: I'm sorry; I didn't quite
5 understand.

6 MR. WILLIAMS: Yes, I do not have any
7 objection to it. But I just want to say that the
8 Immigration matter is pending. It's not like it's a
9 spy.

10 MR. MONTEITH: If the -- if I can clear
11 that up, your Honor. The matter with Immigration
12 and Naturalization is ongoing and has not been
13 resolved. He has had court hearings in New York and
14 has received additional time in order to resolve the
15 matter.

16 MR. WILLIAMS: Yes.

17 THE COURT: All right. The court finds that
18 the defendant is fully competent and capable of entering
19 an informed plea. He is aware of the charge against
20 him. He's aware of the rights that he's giving up.
21 He's aware of the consequences that can follow. His
22 plea is knowing. It is voluntary. It is supported by
23 an independent basis in fact with respect to the
24 material elements of this offense. Therefore, the court
25 will accept his plea at this time.

1 Do you waive the reading of the count, Mr.
2 Monteith?

3 MR. MONTEITH: We do, your Honor.

4 THE CLERK: Mr. Williams, if you'd please
5 stand.

6 To the superseding indictment filed on August
7 5th, 2004, count one charges you with false statements,
8 in violation of Title 18, United States Code, Section
9 1001.

10 How do you plead as to count one?

11 MR. WILLIAMS: Guilty.

12 THE COURT: The defendant is judged guilty of
13 that offense, and sentencing is scheduled for January
14 14th, 2005, at 9:30 a.m.

15 What is the situation with respect to
16 bail?

17 MR. RUBEGA: The defendant's on personal
18 recognizance, your Honor, and the United States sees
19 nothing wrong with continuing that. He's been
20 cooperative and responsive.

21 THE COURT: All right. And the current bail
22 conditions will remain in effect.

23 You have an obligation to comply with those

24 conditions, Mr. Williams. If you fail to do so, you
25 could be detained pending your sentencing.

19

1 And you have an obligation to appear for your
2 sentencing. If you fail to appear, you could be charged
3 with another crime that also carries a prison sentence
4 with it. Do you understand that?

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: The court will be in recess.

7 MR. MONTEITH: Thank you, your Honor.

8 (Court adjourned at 2:25 p.m.)

9

10 C E R T I F I C A T E

11

12

13 I, Celeste A. Quimby, do hereby certify that
14 the foregoing transcript is a true and accurate
15 transcription of the within proceedings, to the best of
16 my knowledge, skill, ability and belief.

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CELESTE A. QUIMBY, NH LCR No. 17

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